IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl..No. 4225 of 2007()

CRIME NO.470/07 OF KOTTARAKKARA POLICE STATION

PETITIONER ACCUSED

AJAYAN, S/O.GOPALA PILLAI,
PUTHENVILA NEAR AMMANKOVIL,
KIZHAKKEKKARA,KOTTARAKKARA,
KOLLAM DISTRICT.

BY ADV. SRI.SAJU.S.A

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4225 OF 2007

Dated this the 20th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a crime which is now being investigated into for the offence punishable under Sec.304 Part II of the IPC. The crux of the allegations is that in the course of a push and pull in connection with the dispute relating to hiring of a vehicle, the petitioner, who was the driver in the autorikshaw, pushed the deceased and the deceased hit on a K.S.R.T.C. bus which was passing by and suffered fatal injuries. The crime was initially registered under Sec.304-A of the IPC against the driver of the K.S.R.T.C. bus; but, in the course of investigation, the Investigator has come to realise that the petitioner is guilty of the offence under Sec.304 Part II of the IPC. Accordingly, the Section of the offence and the name of the accused have

been altered in the crime. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is idle to assume that the petitioner had any requisite contumacious or culpable state of mind even if the entire case of the prosecution is accepted. It is difficult to assume that the petitioner would have pushed the deceased with consciousness about the possibility of the K.S.R.T. C. bus passing by at that very moment.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the conduct of the petitioner subsequent to the event throws light on the culpable state of mind of the petitioner. The petitioner is alleged to have made himself scarce from the scene of the crime without attending to the injured. The totality of inputs cannot help the Court at this stage to rule out the possibility of the petitioner having the requisite culpable state of mind. At any rate, this is not the stage at which the materials have to be weighed in golden scales to finally pronounce the culpability. The petitioner does not deserve to be favoured with any direction under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. As the matter requires serious consideration, the Case Diary was called for and perused by me. Having considered all the relevant inputs, I am satisfied that this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C., can or ought to be invoked in favour of the petitioner. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction in the ordinary and normal course and apply for regular bail.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge